U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32494501

Date: AUG. 12, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a pharmaceutical production manager in the field of microbiology, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement for this classification through evidence of either a major, internationally recognized award or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that:

- They have extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the United States to continue work in their area of extraordinary ability; and
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which includes evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is currently employed as the head of microbiology for a pharmaceutical company in the United States, focusing on sterility in pharmaceutical production operations. He holds a master's degree in applied microbiology from [redacted] in India and has been working in the field of microbiology in the pharmaceutical industry since graduating in 2009. The record includes a letter from his employer regarding a recent promotion and pay raise, sufficiently evidencing his intent to continue working in his field.

A. The Petitioner's Field of Endeavor

In Parts 5 and 6 of Form I-140, Immigrant Petitioner for Alien Workers, the Petitioner listed his current and proposed job title as microbiology manager (microbiology department head). The Director noted in her decision that when responding to her request for evidence (RFE), the Petitioner stated that his field of endeavor is microbiology, not the more narrowly defined field of microbiology management. She considered this to be an impermissible material change to the petition and compared the difference between these two fields to that between an athlete competing in a sport and one transitioning to coaching in the same sport. The Director also concluded that, as the Petitioner indicated that his occupation is microbiology manager, he must meet the requirements of the evidentiary criteria based on his work in that field only.

On appeal, the Petitioner asserts that there was no material change to his petition. Our review of the record shows that he has been consistent in describing his field of endeavor in the field of microbiology, and that the explanation in his response to the Director's RFE was not a material change. We therefore withdraw the Director's conclusion in that regard. In addition, to the extent that the Director limited consideration of the evidence to that which applied only to the narrower field of microbiology management, we withdraw those conclusions and consider the evidence applicable to the field of microbiology.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iv), relating to his participation as a judge of the work of others. However, for the reasons below, we withdraw the Director's conclusion regarding this criterion. Further, although the Petitioner asserts that he also meets an additional five evidentiary criteria on appeal, after reviewing all the evidence in the record, we conclude that it does not show that the Petitioner meets at least three of the evidentiary criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

To meet this criterion, a petitioner must establish that they have received prizes or awards, which were granted for excellence in their field of endeavor, and that the prizes or awards are nationally or internationally recognized in their field of endeavor.

The Petitioner submitted a certificate indicating that he presented a paper at a conference in 2008. In the blank line following "presented a paper entitled" is handwritten the title of the paper followed by "and won third prize." Other certificates in the record include appreciation awards from the Petitioner's employers, a paper award entitled "Eminent Prudent India" from an organization called [redacted] a letter from H- L-, LLC bestowing an "Industrial Excellence Award" to the Petitioner, and a "Certificate of Excellence" from [redacted] which congratulates the Petitioner for the installation of the company's [redacted] equipment at his employer's facility. The Director determined that none of this evidence showed that the Petitioner had received a nationally recognized prize or award for excellence in his field of endeavor.

On appeal, the Petitioner challenges the Director's statement that "any award less than First/Grand Prize is not honoring excellence in the field." We agree that "excellence" is not inherently limited to a first place or grand prize award. But as explained above, it is a petitioner's burden to establish, by a preponderance of the evidence, that a particular award or prize meets all of the elements of this criterion, including that it was granted based upon excellence in their field of endeavor. Here, the Petitioner relies solely upon the handwritten notation on the certificate awarding him third prize at the conference and does not provide information about the criteria for the awarding of this prize, the number of competitors, or any limitations on competitors, all of which are relevant considerations in making this determination. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. We agree with the Director's conclusion that the Petitioner has not met his burden to establish that the third prize certificate was awarded for excellence in the field of microbiology.

Similarly, the Petitioner relies upon the word "eminent" on the certificate awarded by the [redacted] organization to assert that it was awarded for excellence, without providing further documentary information about the award criteria, number of competitors, or other awards granted at this event." It is also not apparent whether this was one of the top prizes awarded at this event. The Petitioner has therefore not demonstrated that the "Eminent Prudent India" award was granted for excellence in the field of microbiology.

Next, the Petitioner asserts that the "Certificate of Excellence" from [redacted] is "particularly notable as it was given directly in recognition of the [redacted] technology introduced by [Petitioner] to the pharmaceutical industry in the United States." But this quotation from the writer of an expert opinion letter (and repeated by the Petitioner in his brief) is, at the least, a distortion of the facts presented in the record. Neither the certificate, nor the "customer testimonial" concerning this project, suggest that the Petitioner had a role in "introducing" the technology behind this equipment. Rather, they verify that he led his employer's project to acquire and install the equipment, and the certificate rewards his "unwavering dedication" to select and install [redacted] products. As with the awards considered above, the evidence does not demonstrate that the Petitioner received this certificate for excellence in the field of microbiology.

Regarding the remaining certificates of achievement submitted under this criterion, the Petitioner makes a blanket statement that they were all issued by multinational organizations and so should be considered "international in nature." But this assertion is insufficiently detailed to challenge the Director's decision,[1] and reflects a misunderstanding of the requirements of this criterion, one of which calls for evidence that prizes or awards be nationally or internationally *recognized*. The fact that the certificates were issued by multinational organizations alone is insufficient to show that they are recognized beyond those organizations in the broader field of microbiology. We conclude that none of the certificates evidence prizes that have been shown to have the required level of recognition in the Petitioner's field of endeavor.

For all the reasons discussed above, we conclude that the Petitioner has not established that he meets this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

To meet the requirements of this criterion, a petitioner must provide evidence of published material that is both about them and related to their work in the field of endeavor. This evidence must include the title, date, and author of the material, and comply with the provisions regarding the translation of materials in a foreign language at 8 C.F.R. § 103.2(b)(3). In addition, a petitioner must submit evidence that the medium in which the material was published is a professional or major trade medium, or other major medium.

As the Petitioner concedes that one of the materials submitted in response to the Director's RFE was published after the time of filing and therefore cannot be considered to establish his eligibility for this petition, the sole remaining evidence in the record is a single paragraph which appeared in the Indian newspaper *Dainik Jagran* in 2012.[2] However, the English translation of this article does not comply

[1] *Cf. Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support)

[2] The Director concluded that the article did not discuss the Petitioner's work in his field, and was not published in a major medium. As it is about the Petitioner's research in microbiology, we disagree and determine that it is about the Petitioner

with the requirements at 8 C.F.R. 103.2(b)(3). Per the regulation, the translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* Here, the translator makes no statement about the completeness of the translation, nor does he verify his competence to translate from Hindi to English. Because the Petitioner did not submit a properly certified English language translation of the article as required, we accord it no weight as we cannot determine whether it supports their claim. We further note that the evidence lacks the name of the author of this material, as required. Accordingly, the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

This criterion requires evidence that an individual acted as a judge of the work of others engaged in the same field of endeavor, or an allied field. The Director concluded that the Petitioner met this criterion based on submitted comments on several World Health Organization (WHO) draft documents pertaining to pharmaceutical manufacturing standards and practices. However, the emails requesting an unspecified group to submit any comments on these documents include "PUBLIC CONSULTATION" in their subject lines, a process in which organizations typically publish calls for comments from the general public. Although the Petitioner, in response to the RFE, described his role as peer review, he did not explain the nature of his involvement with the WHO. In addition, the Petitioner submitted the pages listing his name in the acknowledgements section of the final documents published by the WHO, but this evidence does not indicate that he and the others listed were selected by the WHO to judge the work of the named members of the relevant committee.[3]

Similarly, the Petitioner also provided a letter from USP, acknowledging receipt of his "PF comments." The organization's website at www.uspnf.com explains that *Pharmacopeial Forum* (PF) "is a free bimonthly online journal in which United States Pharmacopeia (USP) publishes proposed revisions to *USP-NF* for public review and comment."

To meet this criterion, a petitioner must establish that they were invited to judge the work of others in their field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. The record does not establish that the Petitioner was selected or personally invited by the WHO or USP to participate in reviewing and providing comments on these documents, but that he voluntarily responded to calls for public comment. As such, we withdraw the Director's determination and conclude that the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi)

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and his work in the field of endeavor. In addition, the record includes several documents showing *Dainik Jagran's* history and readership figures over an extended period and sufficiently verify its status as a major medium in India at the time.

[3] We note that the full text of the acknowledgments section of these reports, which were not submitted but are publicly available at www.who.int/publications, thanks the Petitioner and dozens of others for "the valuable contributions made" to the work of the expert committee responsible for the report.

To meet this criterion, a petitioner must submit evidence that they have authored scholarly articles in their field of endeavor, and that the media in which the articles were published are professional or major trade media, or other major media.

In claiming that he meets the requirements of this criterion, the Petitioner partially relies upon his previously discussed role as a commentor on several draft WHO reports relating to pharmaceutical standards and practices. We note that the Director mischaracterized this role in her decision, stating that the Petitioner's "editing" of these reports "may relate to being a co-author on a scholarly article." As discussed above, the Petitioner submitted comments on the draft documents as part of a call for public consultation, activity which he described as "peer review" in his response to the Director's RFE, and his name was listed in the acknowledgments section for a reason not specified in the evidence. This evidence does not show that he acted or was credited either as an editor or an author of the WHO reports.

The Director also concluded that the evidence of the Petitioner's service as a keynote speaker at a conference did not show that he had authored a scholarly article that was published in one of the qualifying types of media. We agree that the record does not establish that the Petitioner authored a scholarly article in connection with this conference, and he does not challenge this aspect of the Director's decision on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

For the reasons discussed above, the Petitioner has not established that he meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

To meet the requirements of this criterion, a petitioner must establish that they have served in a role that was either leading or critical for an organization or establishment, and that the organization or establishment has a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. Evidence supporting a critical role should show that the petitioner has contributed in a manner that is of significant importance to the outcome of the organization's or establishment's activities, or those of a division or department.

Here, the Director stated in her decision that the Petitioner's role "may have been leading or critical" for his current employer in the United States, but concluded that he had not submitted evidence of awards, recognition or achievements garnered by his employer, and thus had not established its distinguished reputation. On appeal, the Petitioner interprets the Director's statement as a conclusion regarding his role with his employer, and asserts that the employer's distinguished reputation is "demonstrated by the honors received by [sic] *multiple international organizations* for its groundbreaking implementation of colony counter automation in its sterile laboratory."

Regarding the first element of this criterion, to the extent that the Director's statement was a conclusion regarding the Petitioner's role, we withdraw that conclusion in part. As noted above, a petitioner must show that their role is leading or critical for an organization or establishment, or a department or division thereof. To support the claim that his role for his employer is leading, the Petitioner submitted

an organizational chart showing his role as senior manager, microbiology reporting to the senior vice president of operations (SVPO) along with 9 other managers, and another showing that his direct reports total 12 microbiologists and technicians. This evidence shows that his position is leading for the microbiology department of his employer, but not for his employer overall.

Turning to whether the Petitioner has established that he serves in a critical role, the evidence includes a letter from his immediate supervisor, the previously mentioned SVPO. He explains that the Petitioner is responsible for the quality and safety of injectable pharmaceuticals at the company's production facility in the United States, and was responsible for the installation and implementation of a sterile laboratory at the facility. The writer further notes that the [redacted] equipment installed in the laboratory under the Petitioner's leadership was the first such installation in the U.S. He also notes that he heavily depends on the Petitioner to ensure the safety and quality of injectable pharmaceuticals produced at the facility. This letter sufficiently demonstrates the Petitioner's critical role for his employer's pharmaceutical production facility, but again not for his employer overall.

As for the distinguished reputation of either the microbiology department or the facility, we note that the Petitioner's statement speaks of awards received by his employer, but the evidence he refers to are the certificates he personally received that were discussed above. The record does not contain evidence of any awards or other recognition received by the Petitioner's employer. While other evidence referred to on appeal, including letters from the Petitioner's former and current colleagues, refer to the microbiology laboratory as "state of the art," this evidence is insufficient to show that the laboratory, facility, or the Petitioner's employer enjoy a distinguished reputation in the field of microbiology or amongst pharmaceutical producers. As such, the Petitioner has not shown that he meets this criterion.

B. Final Merits Determination

Per the analysis above, the Petitioner has not established that he meets the requirements of five of the six evidentiary criteria he has claimed on appeal. Although he claims eligibility for an additional criterion on appeal, relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), he cannot fulfill the initial evidence requirement of meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve his appellate arguments regarding the additional criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-,* 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Accordingly, we need not provide the type of final merits determination referenced in *Kazarian,* 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the sustained acclaim and recognition as amongst the very top of his field required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.